

WILLIAM J. COLMAN

IBLA 78-573

Decided April 3, 1979

Appeal from notice of Utah State Office, Bureau of Land Management, holding right-of-way application U-29690 for amendment.

Affirmed.

1. Act of February 15, 1901—Federal Land Policy and Management Act of 1976:
Repealers—Federal Land Policy and Management Act of 1976:
Rights-of-Way—Rights-of-Way: Act of February 15, 1901

The Act of February 15, 1901, 43 U.S.C. § 959 (1970), was repealed by sec. 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793, and any use or occupancy of public land granted subsequent to the effective date of FLPMA, Oct. 21, 1976, must be issued under authority of that Act. In authorizing the Secretary to grant rights-of-way, FLPMA provides that the Secretary shall require the applicant to submit certain information relating to the right-of-way, and a state office notice enumerating such requirements is consistent with FLPMA.

APPEARANCES: William J. Colman, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

William J. Colman appeals from a notice of the Utah State Office, Bureau of Land Management (BLM), dated June 16, 1978, stating that the Act of February 15, 1901, 43 U.S.C. § 959 (1970), under which appellant had filed his application for a right-of-way had been

repealed by section 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793. The notice informed appellant that processing of his application may continue under FLPMA, 43 U.S.C. § 1761 (1976), and that his application was being held for amendment in accordance with the requirements of that Act. The notice enumerated a number of requirements with which appellant must comply to meet the terms of FLPMA, supra.

Appellant seeks the right-of-way to construct and use a reservoir in which to conduct solar evaporation of waters from the northwest arm of the Great Salt Lake for the purpose of removing the waters from the chemicals contained in it and effecting a rough separation of those chemicals.

In his statement of reasons, appellant contends that the application should be processed under the Act of February 15, 1901, supra. This contention is based on the following reasons: (1) Appellant filed the application on March 20, 1975, under this Act on the advice of BLM. (2) It would be improper for BLM to require appellant to file under FLPMA which was passed more than a year after appellant's application had been filed under the Act of February 15, 1901, supra. (3) Appellant presumed that the application was being processed under the Act of February 15, 1901, supra, while he commenced operations under a Special Land Use Permit issued by BLM.

Further, appellant notes that the surface of lands in question is not suitable for multiple-use management because they are salty mud flats with a shallow briny water table, and vegetation will not grow. Also, appellant alleges that his business will have no adverse environmental effect on air or water and would be beneficial to the magnesium and lithium industries.

Finally, appellant objects to BLM's requiring that his application requesting a term duration of indefinite years be amended to reflect a term duration of 30 years. Appellant points out that a new industry should be given an indefinite period of time in which to develop, grow, and mature. He notes that the mineral deposit to be worked, which is the brine of the Great Salt Lake, contains sufficient magnesium to last approximately 1,000 years at this country's total present rate of production.

The Act of February 15, 1901, supra, was repealed by section 706 of FLPMA, 90 Stat. 2793, effective October 21, 1976. Use or occupancy of public land granted subsequent to the effective date of FLPMA must be issued under authority of that Act. 43 U.S.C. § 1732(b) (1976); Arthur G. Lane, Jr., 38 IBLA 297, 298 (1978).

Section 701(a) of FLPMA, supra, provides that nothing in that Act shall be construed as terminating any valid right-of-way existing on the date of approval of the Act (October 21, 1976). Appellant did not have a valid right-of-way but only an application for a right-of-way on this critical date. Therefore, he had no valid existing right which would survive FLPMA, supra. 43 U.S.C. § 1701(h) (1976); see also 43 U.S.C. § 1769 (1976). We note that even if appellant had been granted a right-of-way under the Act of February 15, 1901, supra, it would have been subject to revocation at the discretion of the Secretary. 43 U.S.C. § 959 (1970) read, in part:

And provided further, That any permission given by the Secretary of the Interior under the provisions of this section may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park.

The language of this statute made it clear that the holder of a right-of-way under this Act had no more than a revocable permit. United States v. Colorado Power Co., 240 F. 217, 220 (D. Colo. 1916); H. L. Townsend, 26 IBLA 175, 176 (1976).

Since the Act of February 15, 1901, supra, has been repealed, appellant must comply with the terms of FLPMA, supra, if he wishes to obtain a right-of-way. In authorizing the Secretary to grant rights-of-way, 43 U.S.C. § 1761(b)(1) (1976) provides that:

[T]he Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

The requirements enumerated in the State Office notice are consistent with this provision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the notice [Illegible Text] affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

